



Federal Communications Commission
Washington, D.C. 20554

September 5, 2007

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

DA 07-3834

Harold Mordkofsky
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W. Suite 300
Washington, D.C. 20037

Re: Columbia Communications, Inc.
Request for Extension of Time to Construct
Call Signs WPVH438 and WPVH439

Dear Mr. Mordkofsky:

This letter responds to the request for extension of time to construct filed on June 21, 2007, on behalf of Columbia Communications, Inc. (Columbia) for two Part 22 Economic Area (EA) paging licenses (Extension Request).¹ As discussed below, we deny the Extension Request and notify Columbia that because it failed to construct the two licenses in a timely manner the licenses terminated automatically on June 21, 2007.

Section 22.503(k) of the Commission's rules requires that an EA paging licensee must construct facilities to cover one-third of the population of its license area within three years and cover two-thirds of the population of its license area within five years of the grant of the authorization. Alternatively, the licensee may elect to demonstrate that, no later than five years after the initial grant of its license, it provides substantial service to its licensed area.² In addition, Section 1.946(d) of the Commission's rules requires a licensee who commences service within its construction period to notify the Commission by filing an FCC Form 601 within 15 days of the expiration of the applicable construction deadline.³ Finally, a licensee may request an extension of a construction deadline, but the request must be filed before the expiration of the construction period.⁴

Columbia was granted the two licenses (call signs WPVH438 and WPVH439) that are the subject of its Extension Request for the Sacramento – Yolo California EA on June 21, 2002 with a three-year construction deadline of June 21, 2005, and a five-year construction deadline of June 21, 2007. On May 9, 2005, the Wireless Telecommunications Bureau consented to the partial assignment for which Columbia proposed to partition seven counties included on its authorizations for call signs WPVH438 and WPVH439 to Placer County (Partitioning Application).⁵ In the Partitioning Application, Columbia certified that it would meet all of the construction requirements for the entire licensed area.⁶ On July 6,

1 FCC File Nos. 0003082379 (WPVH438) and 0003082387 (WPVH439).

2 47 C.F.R. § 22.503(k).

3 47 C.F.R. § 1.946(d).

4 47 C.F.R. § 1.946(e).

5 FCC File No. 0001683635. The licenses issued to Placer County are call signs WQDC430 and WQDC431. A notification of consummation was filed on July 13, 2005. See File No. 0002238525.

6 See Schedule B to FCC File No. 0001683635. See also 47 C.F.R. § 22.513(f)(1)(i) and (ii).

2005, Columbia filed its three-year construction notification for call signs WPVH438 and WPVH439 and certified that it would demonstrate substantial service within five years of its initial license grant (*i.e.*, June 21, 2007).⁷

On June 21, 2007, Columbia filed its Extension Request and requested an extension of time to construct until June 21, 2012 or alternatively a “temporary” waiver of Section 22.503(k)(2) of the Commission’s rules until June 21, 2012.⁸ Columbia states that it was relying on Placer County to construct a system by the June 21, 2007 construction deadline that would satisfy the construction requirements for Columbia’s two licenses (call signs WPVH438 and WPVH439).⁹ In support of its reliance on Placer County constructing a system, Columbia states that it is clear that the Commission allows licensees to get the benefit of the construction of its “partitionees” in meeting construction requirements.¹⁰ Columbia also states that it had no way of knowing that Placer County would not meet its construction requirements by the June 21, 2007 deadline and even if Columbia were aware of this, construction of Columbia’s own facilities was not in its business plan and would not have been economically feasible.¹¹ Columbia states that it has been disadvantaged and that the circumstances involving its lack of construction “are unique and could not have reasonably foreseen.”¹²

A waiver may be granted, pursuant to section 1.925 of the Commission’s rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹³ Further, section 1.946 allows for an extension of time to meet construction requirements where a licensee demonstrates that failure to meet the construction deadline is due to circumstances beyond their control, but it also outlines reasons that would not justify an extension, such as a failure to obtain financing, or to obtain antenna sites or equipment, as well as other reasons.¹⁴

We find that Columbia has failed to justify grant of its Extension Request. Specifically, we find that Columbia fails to demonstrate that it meets the standard for justifying a waiver under section 1.925 or an extension under section 1.946 of the Commission’s rules.¹⁵ When Columbia partitioned a portion of its licenses to Placer County, it elected to maintain the construction obligations for the licensed area;

7 FCC File No. 0002228783.

8 Extension Request at 1. This date corresponds to a pending request for extension of time to construct on file for Placer County for nine licenses. The two partitioned licenses (call signs WQDC430 and WQDC431) obtained by Placer County from Columbia are not a part of the extension request since Placer County does not have a construction requirement for those two licenses.

9 *Id.*

10 *Id.* at 2.

11 *Id.*

12 *Id.* at 3.

13 47 C.F.R. § 1.925.

14 47 C.F.R. § 1.946(e).

15 See 47 C.F.R. §§ 1.925, 1.946(e).

therefore Placer County's licenses have no relevance here and Columbia cannot now shift the responsibility for its lack of construction to Placer County. Further, Columbia is mistaken when it argues that the Commission's rules allow licensees to count the construction of its "partitionees" towards its own construction requirements. The policy that Columbia attempts to rely on applies in the context of spectrum leasing where the Commission stated that licensees may rely on the activities of "spectrum lessees" for purposes of complying with construction requirements.¹⁶ In fact, Columbia's own citation to this policy correctly notes that the policy applies to "lessees."¹⁷ Columbia's decision to partition these licenses and to maintain the construction obligation does not qualify as a circumstance beyond its control, nor is it a circumstance that is "unique and could not have reasonably foreseen."¹⁸ Further, Columbia fails to demonstrate how a grant of its request would serve the purpose of the Commission's construction rules. Columbia appears to seek additional time so that it can rely upon the construction efforts of a separate licensee and offers no indication that the spectrum it holds will be put to use in the near future. Therefore, we conclude that the purpose of the construction requirements would not be served by a grant of Columbia's request, or that, in light of unique or unusual circumstances, the construction deadlines were inequitable, unduly burdensome, or contrary to the public interest, or that Columbia had no reasonable alternative.

Pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331, 1.925, 1.934 and 1.946 and of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.925, 1.934, 1.946, we deny the Extension Request, FCC File Nos. 0003082379 and 0003082387, filed by Columbia Communications, Inc. on June 21, 2007, to the extent set forth in this letter and notify Columbia Communications, Inc. that its authorization for call signs WPVH438 and WPVH439 terminated automatically for failure to construct.

FEDERAL COMMUNICATIONS COMMISSION

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

16 See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503, ¶ 146 (2004) (Second Report and Order).

17 Extension Request at note 5.

18 Id. at 3.